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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3941

11 **JORGE SALDANA VALADEZ**  
12 **25903 Gettysburg Avenue**  
13 **Hayward, CA 94545**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 87769**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about August 31, 2009, the Board of Pharmacy issued Pharmacy Technician  
21 License No. TCH 87769 to Jorge Saldana Valadez (Respondent). The License was in full force  
22 and effect at all times relevant herein and will expire on September 30, 2012, unless renewed.

23  
24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

## STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

1           7.     Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3  
4                                   COST RECOVERY

5           8.     Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
7 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

8  
9                                   DANGEROUS DRUGS

10          9.     Section 4022 of the Code states, in pertinent part:

11           “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
12 except veterinary drugs that are labeled as such, and includes the following:

13           “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
14 prescription,’ ‘Rx only,’ or words of similar import.

15           ...  
16           “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
17 prescription or furnished pursuant to Section 4006.”

18          10.    **Motrin** is a brand name for **ibuprofen**, a pain reliever; at 400mg strength or above it  
19 is a dangerous drug as designated by Business and Professions Code section 4022.

20          11.    **TriNessa** is a combination oral contraceptive containing **norgestimate** and **ethinyl**  
21 **estradiol**. It is a dangerous drug as designated by Business and Professions Code section 4022.

22  
23                                   FACTUAL BACKGROUND

24          12.    From an unknown start date until on or about April 14, 2010, Respondent worked as a  
25 pharmacy technician at a Walgreens Pharmacy (PHY 32349) in Oakland, CA, where by virtue of  
26 his employment he had access to controlled substances and dangerous drugs.

27          13.    Respondent used his access to divert/steal dangerous drugs, including prescription-  
28 strength **Motrin/ibuprofen**, and **TriNessa**. Respondent also stole cash from the pharmacy..

14. The exact number of instances of diversion/theft by Respondent, and the full quantity of dangerous drugs and cash diverted/stolen, are not known, but in the course of investigations conducted by Walgreens and the Board, the following were reported:

a. In or about February 2010, audits or investigations by the Walgreens Pharmacy discovered cash shortages of approximately \$200.00. Further investigation revealed a suspicious transaction at a cash register conducted by Respondent on or about March 26, 2010 that resulted in a cash shortage of \$69.99, in which video evidence showed Respondent concealing the cash from the transaction, voiding the transaction, and deleting the prescription from the record.

b. When confronted, Respondent admitted to Walgreens investigators both orally and in writing that he had received cash from the register(s) in the pharmacy on more than one occasion, and that the total amount taken was approximately \$300.00. He further admitted that he had taken thirty (30) tablets of prescription-strength (600 mg) **Motrin/ibuprofen**, and a package containing twenty-eight (28) pills of the oral contraceptive **TriNessa**, both for his own use.

c. During subsequent interview(s) with Board Inspector(s), Respondent stated that he had only taken cash from the register(s) on one occasion, and that the total amount was \$50.00.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

15. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 12 to 14 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

## SECOND CAUSE FOR DISCIPLINE

(Making or Signing False Certificate/Document)

16. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 12 to 14 above, knowingly made or signed a certificate or other document falsely representing the existence or nonexistence of a state of facts.

1 THIRD CAUSE FOR DISCIPLINE

2 (Furnishing of Dangerous Drug(s) Without Prescription)

3 17. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4059 of the Code, in that Respondent, as described in paragraphs 12 to 14 above, furnished to  
5 himself or another, and/or conspired to furnish, and/or assisted or abetted furnishing of, one or  
6 more dangerous drugs, without a valid prescription.

7  
8 FOURTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

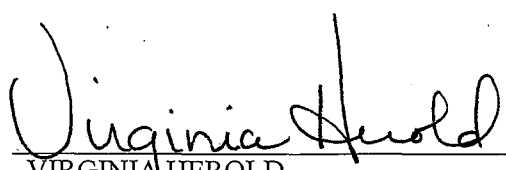
10 18. Respondent is subject to discipline under section 4301 of the Code in that  
11 Respondent, as described in paragraphs 12 to 17 above, engaged in unprofessional conduct.

12  
13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Revoking or suspending Pharmacy Technician License No. TCH 87769, issued to  
17 Jorge Saldana Valadez (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21  
22 DATED: 5/27/11

23   
24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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